

Message Text

LIMITED OFFICIAL USE

PAGE 01 KUALA 06430 01 OF 02 041200Z

12

ACTION EB-07

INFO OCT-01 EA-07 ISO-00 AID-05 CIAE-00 COME-00 FRB-03

INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02 OPIC-03 SP-02

CIEP-01 LAB-04 SIL-01 OMB-01 STR-04 NSC-05 SS-15

CEA-01 L-03 H-02 PRS-01 /081 W
----- 122349

R 040730Z NOV 75

FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC 1631

INFO AMEMBASSY SINGAPORE

LIMITED OFFICIAL USE SECTION 1 OF 2 KUALA LUMPUR 6430

E.O. 11652: N/A

TAGS: EINV MY

SUBJ: INDUSTRIAL COORDINATION ACT

1. SUMMARY. ON OCT 25, MINISTRY OF TRADE AND INDUSTRY (MTI) HELD FIRST IN SERIES OF PROMISED SEMINARS TO EXPLAIN DETAILS OF INDUSTRIAL COORDINATION ACT (ICA) TO FOREIGN AND DOMESTIC FIRMS. MTI REPS STATED BILL WAS NECESSARY TO ENABLE GOM TO GIVE RATIONAL GUIDANCE TO INDUSTRIAL SECTOR TO MEET NEW ECONOMIC POLICY (NEP) GOALS. ICA COVERS ALL MANUFACTURING FACILITIES WITH MORE THAN 25 EMPLOYEES OR M\$100,000 IN SHAREHOLDERS FUND. A SERIES OF CONDITIONS, SIMILAR TO THOSE IMPOSED ON INVESTORS SEEKING INVESTMENT INCENTIVES, WILL BE IMPOSED ON ALL COMPANIES. THESE CONDITIONS RELATE BOTH TO NEP GOALS AND TO FIRMS' OPERATING PROCEDURES. FIRMS WILL HAVE ONE YEAR AFTER EFFECTIVE DATE OF ACT TO SUBMIT LICENSE APPLICATION, WITH BUSINESS AS USUAL PENDING ISSUANCE OF LICENSE. LICENSE NEED ONLY BE OBTAINED ONCE BUT ALL FIRMS WILL NEED TO INDICATE PLANS TO MEET NEP GOALS. IF LICENSE SUBSEQUENTLY REVOKED, FIRM WILL HAVE RIGHT OF APPEAL TO PRIME MINISTER. MANY BUSINESSMEN ATTENDING EXPRESSED GREAT CONCERN AS TO ICA'S IMPACT ON THEIR FIRMS. MTI REPS PROMISED ACT WOULD BE ADMINISTERED JUDICIOUSLY AND FLEXIBLY.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 KUALA 06430 01 OF 02 041200Z

AS RESULT SEMINAR, FROM LIMITED FEEDBACK THUS FAR RECEIVED, LEVEL

OF BUSINESS INTEREST HAS PERCEPTIBLY DROPPED FROM FEAR OF SINISTER INTENT TO CONCERN WITH SERIOUS TECHNICAL AND ADMINISTRATIVE PROBLEMS. END SUMMARY.

2. ON OCT 25, MINISTRY OF TRADE AND INDUSTRY (MTI) HELD FIRST IN SERIES OF HIGHLY PUBLICIZED SEMINARS TO EXPLAIN PROVISIONS OF INDUSTRIAL COORDINATION ACT (ICA). SEMINAR WAS ATTENDED BY GOOD CROSS SECTION OF BUSINESS COMMUNITY IN MALAYSIA, INCLUDING REPRESENTATIVES FROM MALAYSIAN CHINESE, AMERICAN AND OTHER FOREIGN BUSINESSMEN AS WELL AS NUMEROUS REPRESENTATIVES FROM STATE CHINESE CHAMBERS OF COMMERCE.

3. MTI'S BASIC POSITION, WHICH WAS PRESENTED IN OPENING SPEECH BY MINISTER OF TRADE AND INDUSTRY DATUK HAMZAH BIN ABU SAMAH AND WAS STRESSED BY VARIOUS OTHER MTI OFFICERS IN THEIR STATEMENTS, WAS THAT ICA IS NOT RADICAL DEPARTURE FOR GOM BUT RATHER IS NEEDED IN ORDER TO ADEQUATELY CARRY OUT TASK OF REGULATING AND PROMOTING RATIONAL INDUSTRIALIZATION. MTI REPS POINTED OUT THAT HERETOFORE ONLY MEANS OF CONTROLLING INDUSTRIES WAS 1968 INVESTMENT INCENTIVES ACT WHICH ONLY APPLIES TO THOSE NEW DOMESTIC AND FOREIGN INVESTMENTS REQUESTING INCENTIVES. SINCE 1968, ONLY 10 PERCENT OF NEW INVESTMENTS IN MALAYSIA HAVE GONE THROUGH FEDERAL INDUSTRIAL DEVELOPMENT AUTHORITY (FIDA) PROCESS TO OBTAIN THESE INCENTIVES. IN ORDER TO REGULATE REMAINING 90 PERCENT IN EDGING THEM TOWARDS COMPLIANCE WITH THE SOCIAL AND ECONOMIC GOALS OF NEW ECONOMIC POLICY (NEP), MTI HAS BEEN RESORTING TO A VARIETY OF ADMINISTRATIVE MEASURES, WHICH SEVERAL MTI REPS CATEGORIZED AS BEING OF QUESTIONABLE LEGALITY. MTI BASICALLY SEES ICA AS OMNIBUS BILL WHICH SERVES BOTH TO GIVE GOM NECESSARY LEGAL CLOUT TO ENFORCE ALL FIRMS' COMPLIANCE WITH 1990 ECONOMIC GOALS AND WHICH ENDS HEDGEPODGE OF BUREAUCRATIC REGULATIONS UPON WHICH MINISTRY HAS BEEN OBLIGED RELY IN PAST.

4. MTI REPS ALSO ARGUED (SOMEWHAT SPECIOUSLY) BASIC INEQUITY THAT FIRMS WHICH HAVE GONE THROUGH RIGOROUS INCENTIVES PROCESS (WHICH REQUIRES THAT NUMEROUS CONDITIONS REGARDING EQUITY, EMPLOYMENT AND PRODUCTION BE MET) FACE IN COMPETING WITH FIRMS NOT BOUND BY SAME CONDITIONS.

5. MAIN PROVISIONS OF ICA, AS EXPLAINED BY MTI REPS, ARE AS LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 KUALA 06430 01 OF 02 041200Z

FOLLOWS:

(A) ALL MANUFACTURING COMPANIES, AS DEFINED BY GOM STATISTICS DEPARTMENT (WHICH USES UN INTERNATIONAL STANDARD INDUSTRIAL CLASSIFICATION), ARE COVERED BY ACT.

(B) ONLY EXEMPTION, AT PRESENT TIME, IS FOR COMPANIES WITH LESS THAN 25 FULL-TIME EMPLOYEES OR WHICH HAVE LESS THAN

M\$100,000 IN "SHAREHOLDER'S FUND" (DEFINED AS AGGREGATE
OF: PAID-UP CAPITAL, RESERVES, BALANCE OF SHARE PREMIUM
ACCOUNT AND BALANCE OF PROFIT-AND-LOSS APPROPRIATION ACCOUNT).

(C) LICENSE WILL INVOLVE LIST OF SIXTEEN
CONDITIONS, INCLUDING SIX RELATING TO NEP
(LOCATION, EQUITY STRUCTURE, COMPOSITION OF BOARD OF DIRECTORS
TO REFLECT EQUITY HOLDINGS, EMPLOYMENT STRUCTURE,
DISTRIBUTION/MARKETING ARRANGEMENTS AND USE OF BUMIPUTRA
(INDIGENOUS MALAY) PROFESSIONAL SERVICES). OTHER 10 ARE
DESCRIBED AS "GENERAL CONDITIONS" AND GIVE MTI INFLUENCE OVER
PRICING FOR DOMESTIC MARKET, TECHNICAL AGREEMENT AND MARKETING
ARRANGEMENTS IF MINISTRY WISHES TO EMPLOY THEM. DURING
QUESTION AND ANSWER SESSION, IT CLEAR THAT MANY FIRMS ALMOST
AS CONCERNED ABOUT SPECTER OF PRICE CONTROL AND LOSS OF
FLEXIBILITY AS THEY WERE BY REQUIREMENTS TO MEET NEP GOALS.

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 KUALA 06430 02 OF 02 041149Z

12

ACTION EB-07

INFO OCT-01 EA-07 ISO-00 AID-05 CIAE-00 COME-00 FRB-03

INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02 OPIC-03 SP-02

CIEP-01 LAB-04 SIL-01 OMB-01 STR-04 NSC-05 SS-15

CEA-01 L-03 H-02 PRS-01 /081 W

----- 122212

R 040730Z NOV 75

FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC 1632

INFO AMEMBASSY SINGAPORE

LIMITED OFFICIAL USE SECTION 2 OF 2 KUALA LUMPUR 6430

(D) CONDITIONS WILL BE APPLIED ON DIFFERING BASIS DEPENDING ON
WHICH OF FIVE CATEGORIES COMPANY FALLS IN: 1) MANUFACTURERS
WANTING TO ENGAGE IN NEW MANUFACTURING ACTIVITIES AND/OR
WANTING TO EXPAND EXISTING ONES; 2) EXISTING MANUFACTURERS
GIVEN MTI APPROVAL PRIOR TO JAN 1, 1972 WHEN NEP CONDITIONS

MENTIONED ABOVE NOT APPLIED; 3) EXISTING MANUFACTURERS APPROVED BY MTI AFTER JAN 1, 1972 WHEN THESE CONDITIONS APPLIED; 4) EXISTING MANUFACTURERS WHICH HAVE NOT RECEIVED MTI APPROVAL; AND 5) EXPORT ORIENTED INDUSTRIES.

(E) EXISTING MANUFACTURERS WILL HAVE ONE YEAR AFTER EFFECTIVE DATE OF ACT (TO BE ANNOUNCED WHEN IMPLEMENTING REGULATIONS PROMULGATED) TO APPLY FOR LICENSE UNDER ICA. MANUFACTURER WILL BE ALLOWED TO CONTINUE OPERATIONS WHILE SPECIFIC CONDITIONS OF HIS LICENSE ARE NEGOTIATED WITH MTI.

(F) FIRM NEED ONLY RECEIVE LICENSE ONCE. NO REAPPLICATION WILL BE NECESSARY UNLESS FIRM WISHES TO CHANGE PRODUCT LINE OR EXPAND OPERATIONS.

(G) ALL FIRMS WILL BE REQUIRED TO INDICATE THEIR PLANS LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 KUALA 06430 02 OF 02 041149Z

TO MEET NEP GOALS, PARTICULARLY WITH REGARD TO 30 PERCENT BUMIPUTRA SHARE BY 1990. FOR THOSE EXISTING FIRMS WHICH HAVE NOT PREVIOUSLY OBTAINED MTI APPROVAL, TIME WILL BE GRANTED TO COMPLY WITH THESE CONDITIONS.

(H) NO FIRMS WILL BE REQUIRED TO FIRE NON-BUMIPUTRA EMPLOYEES OR TO BREAK EXISTING PROFESSIONAL OR MARKETING ARRANGEMENTS. COMPANIES WILL, HOWEVER, BE EXPECTED TO ADOPT CONCRETE MEASURES OVER A PERIOD OF TIME TO MEET NEP CONDITIONS.

(I) IN CASE OF REVOCATION OF LICENSE, FIRMS WILL HAVE RIGHT TO APPEAL MINISTER'S DECISION TO PRIME MINISTER. ALTHOUGH APPEAL MECHANISMS NOT INCLUDED IN ACT, THIS WAS DECIDED FOLLOWING UPROAR OVER VERY WIDE POWERS ICA GRANTS MTI MINISTER.

(J) DEFINITION OF PRODUCT, WHICH GREATLY WORRIES MANY FIRMS, WILL BE DECIDED ON CASE-BY-CASE BASIS.

(K) FIDA WILL BE ORGANIZATION CHARGED WITH PROCESSING LICENSES.

(L) ALTHOUGH ICA GRANTS MTI OFFICERS RIGHT TO SEARCH FIRMS' PREMISES WITHOUT SEARCH WARRANT, MTI HAS DECIDED THAT THEY MUST OBTAIN PRIOR APPROVAL FROM EITHER MINISTER OR DIRECTOR GENERAL OF MTI. MINISTRY BELIEVES THIS WILL PREVENT ABUSE OF POWER BY "JUNIOR CIVIL SERVANTS".

(M) ALL INFORMATION PROVIDED MTI BY FIRMS WILL BE TREATED AS CONFIDENTIAL.

6. INITIALLY, QUESTION AND ANSWER SESSION WAS MARKED BY APPREHENSION REGARDING GOM INTENTIONS UNDER LAW ON PART OF

MALAYSIAN CHINESE AND FOREIGN BUSINESSMEN AND PROTESTATIONS OF REASONABLE INTENT ON PART OF MTI OFFICIALS. BUSINESSMEN'S CONCERNS FELL INTO TWO GROUPS: UNCERTAINTY AS TO WHAT COMPLIANCE WITH NEP WOULD MEAN TO THEIR FIRMS AND HOW MUCH TIME THEY WOULD BE ALLOWED TO COMPLY, AND SERIOUS QUESTIONS AS TO MECHANICS OF IMPLEMENTATION. LATTER CONCERN PERTAINS ESPECIALLY TO DEFINITION OF PRODUCT MANUFACTURED (WHICH COULD IMPINGE ON FLEXIBILITY OF MEET CHANGES IN DEMAND), SPEED WITH WHICH MTI MIGHT APPROVE EXPANSION PROJECTS, AND DEGREE TO WHICH GOM INTENDS TO IMPOSE PRICE CONTROLS. MTI LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 KUALA 06430 02 OF 02 041149Z

REPS DID BEST TO CONVEY INTENT THAT ACT WILL BE ADMINISTERED FLEXIBLY AND SYMPATHETICALLY. MANY QUESTIONS ALSO POSED AS TO ABILITY OF FIDA TO HANDLE TREMENDOUS WORKLOAD EXPANSION ENTAILED BY ICA. WHILE NO DETAILS GIVEN, MTI REPS COMPLETELY CONFIDENT OF THEIR ABILITY TO PROCESS LICENSES EXPEDITIOUSLY.

7. COMMENT. SERIOUS EFFORT BY MTI IN SEMINAR TO REASSURE BUSINESS COMMUNITY ON ICA SUCCESSFUL TO EXTENT THAT BUSINESSMEN ARE NO LONGER CONCERNED WITH VAGUE FEARS OF POSSIBLE SINISTER INTENT OF ACT. AT SAME TIME, FULL IMPACT OF BILL NOW SINKING IN THROUGH SPELL-OUT OF MANY NUTS AND BOLTS ISSUES THAT COULD ADVERSELY EFFECT FIRMS. IT IS NOTEWORTHY THAT MINISTER'S EARLIER STATEMENT REGARDING "AUTOMATIC APPROVAL" FOR EXISTING FIRMS HAS BEEN GREATLY MODIFIED. IT IS NOW ONLY GENERALLY TRUE FOR THOSE FIRMS WHICH WENT THROUGH FIDA PROCESS AFTER JAN 1, 1972. IT IS REASSURING TO MANY THAT FIDA, WITH ITS REPUTATION FOR EVENHAND-EDNESS AND EFFICIENCY, WILL HANDLE ICA IMPLEMENTATION. AT SAME TIME, SERIOUS QUESTIONS MUST BE RAISED AS TO THAT AGENCY'S ABILITY TO HANDLE HUGE VOLUME OF PAPER THAT LICENSE PROCESS WILL GENERATE, AT LEAST INITIALLY. FIDA REPS GAVE NO INDICATION THEY PLANNING TO EXPAND STAFF. ANY SLOWNESS IN PROCESSING WILL ADD TO SENSE OF UNCERTAINTY FACED BY BUSINESSMEN IN MALAYSIA. IN THIS REGARD, IT APPEARS THAT FIDA DOES NOT YET APPRECIATE ADMINISTRATIVE BURDEN IT IS UNDERTAKING AND, WHEN THIS IS FULLY UNDERSTOOD, IT SEEMS REASONABLE TO EXPECT THAT SERIOUS CONSIDERATION WILL BE GIVEN BY MTI TO A SIGNIFICANT RAISING OF EXEMPTION LEVEL (BASED ON EMPLOYMENT NUMBERS AND "SHAREHOLDER'S FUND") OF FIRMS REQUIRED TO APPLY FOR LICENSE UNDER ICA. REAL IMPACT ON BUSINESS ATTITUDES WILL BECOME CLEARER WITH TIME AND EXPERIENCE, WITH SOME FURTHER CLARIFICATION OCCURRING IN SERIES OF SEMINARS TO BE HELD IN VARIOUS MALAYSIAN TOWNS. NEGOTIATIONS BETWEEN CHINESE COMMUNITY AND MTI ON TEXT OF IMPLEMENTING REGULATIONS EXPECTED CONTINUE, WITH SOME SUGGESTION OF JANUARY 1976 AS TARGET DATE FOR PROMULGATION. WHILE INTENSE LEVEL OF BUSINESS COMMUNITY INTERESTS IN THIS IMPORTANT QUESTION (SEE KL A-143) EXPECTED CONTINUE IN FUTURE, DEGREE OF CONCERN HAS PERCEPTIBLY SHIFTED DOWNWARD FROM FEAR OF SINISTER GOM INTENT TO FOCUS ON MANY SERIOUS TECHNICAL AND ADMINISTRATIVE PROBLEMS. END COMMENT.

UNDERHILL

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRADE LAW, INDUSTRY, BUSINESS FIRMS, SEMINARS, SPEECHES
Control Number: n/a
Copy: SINGLE
Draft Date: 04 NOV 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MartinML
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975KUALA06430
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750382-0498
From: KUALA LUMPUR
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751177/aaaacqyy.tel
Line Count: 277
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MartinML
Review Comment: n/a
Review Content Flags:
Review Date: 22 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 JUL 2003 by BoyleJA>; APPROVED <19 NOV 2003 by MartinML>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: INDUSTRIAL COORDINATION ACT
TAGS: EINV, MY, (HAMZAH BIN ABU SAMAH)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006